JD–106–99
Easton, PA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

EASTON HOSPITAL

and Case No. 4–CA–27704

UNITED INDEPENDENT UNION,
NFIU/LIUNA, AFL–CIO

Peter C. Verrochi, Esq.,
of Philadelphia, Pennsylvania,
for the General Counsel.
Roger D. Susanin and Daniel J. Brennan, Esqs.,
of King of Prussia, Pennsylvania,
for the Respondent.
Stephen C. Richman, Esq.,
of Philadelphia, Pennsylvania,
for the Charging Party.

DECISION

Statement of the Case

MARTIN J. LINSKY, Administrative Law Judge. On December 1, 1998 the United Independent Union, NFIU/LIUNA, AFL–CIO, Union herein, filed a charge against Easton Hospital, Respondent herein.

On April 19, 1999 the National Labor Relations Board, by the Regional Director for Region 4, issued a Complaint which alleges that Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act, herein the Act, when it withdrew recognition of the Union as the exclusive collective bargaining representative of a unit of registered nurses.

Respondent filed an Answer on April 29, 1999 in which it claimed that it lawfully withdrew recognition of the Union because it had a reasonable good faith doubt of the continued majority status of the Union citing *Allentown Mack Sales & Service, Inc. v. NLRB,* 118 S. Ct. 818 (1998).

A hearing was held before in Philadelphia, Pennsylvania, on July 20, 1999.

Based on the entire record in this case, to include post hearing briefs submitted by the General Counsel, Respondent, and the Charging Party, and upon my observation of the demeanor of the witnesses, I make the following:

Findings of Fact

I. Jurisdiction

At all material times, Respondent, a Pennsylvania non-profit corporation, has operated a not-for-profit acute care hospital in Easton, Pennsylvania.

Respondent admits, and I find, that at all material times Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and has been a health care institution within the meaning of Section 2(14) of the Act.

II. The Labor Organization Involved

Respondent admits, and I find, that at all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practice

As an Administrative Law Judge with the National Labor Relations Act it is my function to find the facts and then apply current Board law, as modified by the U.S. Supreme Court, to those facts. In light of that standard and relying on Board precedent and the recent Supreme Court decision relied on by Respondent, i.e., *Allentown Mack Sales & Service, Inc.,* supra, it is my conclusion that Respondent had a reasonable good faith *doubt*, based on objective considerations, to withdraw recognition of the Union when it did so on November 30, 1998 and did not violate the Act.

I note that the evidence in this case consisted of a number of documents and the testimony of the Hospital's Vice President of Human Resources Robert J. Bandola and Union Executive Vice President Paul Diana. Bandola and Diana impressed me as honest men and I credit their testimony in its entirety.

The unit involved in the instant case is a unit of Registered Nurses working in certain specialized assignments. The Union was certified by the National Labor Relations Board on September 7, 1997 following an election to be the exclusive collective bargaining representative of the Registered Nurses in that unit. In the certification the unit is described as follows:

> "INCLUDED: All full-time and regular part-time registered nurses employed as Cardiac Catheterization Nurses, Electro Physiology Nurse, Cardiac Rehabilitation Nurse, Renal Dialysis Nurses and Radiology Nurses employed by Easton Hospital at its 250 South 21st Street, Easton, Pennsylvania facility.
>
> EXCLUDED: All other employees, guards and supervisors as defined in the Act."

This unit of employees was referred to by the parties as the "patient care areas" bargaining unit.[1]

[1] The Union is also the certified collective bargaining representative of two other much larger units at Easton Hospital, i.e., a unit of registered nurses and a unit of licensed practical nurses. The Union and Hospital agreed to a collective bargaining agreement which covered both of these units and they are not involved in this litigation.

The Union enjoys an irrebutable presumption of majority status for one year following certification. In addition, if a collective bargaining agreement is reached between the employer and a union, the union will enjoy an irrebutable presumption of continued majority status during the length of the contract provided the contract is for no longer than three years.

In the instant case the Hospital and the Union began negotiations for an initial contract. The parties met a number of times and reached tentative agreements on a number of issues. On November 16, 1998 the Hospital made its "final" offer to the Union.

The Union did not accept the Hospital's "final" offer. On and after September 8, 1998, since the one year period of "irrebutable" presumption had expired, the Union, in the absence of a contract, enjoyed only a rebutable presumption of continued majority status.

After September 8, 1998 the Hospital could lawfully withdraw recognition of the Union if it had a reasonable good faith *doubt*, not certainty, but *doubt,* of the continued majority support of the Union based on objective evidence.

As of November 30, 1998 there were fourteen (14) employees in the "patient care areas" unit. On November 30, 1998 an envelope was delivered to the Hospital's Vice President of Human Resources Ronald J. Bandola. Inside the envelope was a letter, which stated as follows:

> "November 24, 1998
>
> To Whom It May Concern:
>
> We the undersigned are of the understanding that since a year has gone by since the initial vote, we are eligible to vote again regarding union membership. We feel that we have been misrepresented and therefore would like an immediate opportunity to revote to determine whether we want the union to continue its representation of our needs with Easton Hospital.
>
> As we would like to vote on this matter immediately we ask that you contact us with a date and time for a vote.
>
> Respectfully Submitted," (Respondent Exh. 1).

The letter was signed by seven (7) of the fourteen (14) employees in the "patient care areas" unit. The language of the letter signed by half of the unit would cause a reasonable doubt to be entertained about the continued majority support of the Union among the unit members. A majority of the unit would be eight (8) or more. Common sense instructs one that people want a new election because they desire a result different from the earlier election and common sense also instructs that people who feel "misrepresented" probably do not support the entity doing the representing. The letter furnishes a reasonable good faith doubt as to the continued majority support of the Union. There is no allegation or evidence that Respondent did anything improper or unlawful, which resulted in this letter being presented to management.

After reading the letter, Bandola contacted counsel and made the decision, after reading the letter and consulting counsel, to withdraw recognition of the Union and to withdraw its "final offer" to the Union. Bandola faxed the following letter on November 30, 1998 to the Union:

"Mr. Paul Diana
Executive Vice President
United Independent Union
1166 South 11th Street
Philadelphia, PA 19147

Dear Mr. Diana:

The Hospital is in possession of evidence that provides it with a good faith belief that the Union no longer represents a majority of the employees in the 'patient care areas' bargaining unit. In light of the Hospital's belief and the controlling federal law, the Hospital is compelled to cease bargaining and to withdraw its November 16, 1998 offer for a three year collective bargaining agreement.

Very truly yours," (General Counsel Exh. 8).

Bandola credibly testified that he had other evidence of employee dissatisfaction with the union. Two members of the "patient care areas" unit, Pam Valley and Lori Geklinsky, in August or September 1998 had told Bandola "that the nurses in Cardiology do not want to be member of the Union any more. They asked how they could get out of the union. What can I do to help them" (Tr. 24). Bandola told them to call the NLRB in Philadelphia.

Unit employee Jean Losagio said to Bandola "I don't know why we need this union here. They're doing nothing for us. I never voted for the union. How can we get rid of them. Logasio also told Bandola that "other people feel the same way I do." (Tr. 26)

Valley, Geklinsky, and Losagio all signed the November 24, 1998 letter.

Supervisors Dave Lugg and Lori Tonetti reported to Bandola in late summer 1998 that the nurses in cardiology were saying they didn't like and didn't want the Union.

Supervisor Sue Groeler told Bandola that unit employee Teresa Langoussis from the dialysis unit in the August to September time frame told her that some of the nurses "don't want to be in the union" (Tr. 28). Langoussis did *not* sign the November 24, 1998 letter.

I find that the November 24, 1998 letter signed by half of the unit by itself furnished Respondent with a reasonable good faith doubt of the continued majority support of the Union. Prior statements of employees to Bandola corroborate the reasonable good faith doubt that emanates from the letter as does the employees' statements about union support reported to Bandola by supervisors Lugg, Tonetti, and Groeler.

Union Executive Vice President Paul Diana credibly testified that he had received no complaints about the Union from any members of the "patient care areas" unit. He also produced a letter from one of the seven unit employees who signed the November 24, 1998 letter. This letter was dated December 9, 1998 and was signed by unit employee Diane Brown. The letter was as follows:

> "I, the undersigned, have been frustrated with the situation our patient care area has been in for the past year plus. The frustration has come from waiting for the Hospital and the Union to initially negotiate after being promised it

> would happen right after the 'other negotiations' were completed.[2] Then the continued wait during a very slow negotiation process for our area. The wage package and other items were tentatively agreed to in May 1998, but the wage package has been withheld until negotiations are completed while every other employee has received a bonus. I misunderstood what the petition meant, but wanted the Hospital to inform us of why this process has been so lengthy and discriminatory against us. I want to withdraw my name from the submitted 'petition' (General Counsel Exh. 10).

Diane Brown's letter was not turned over to the Hospital. The Hospital was unaware of this letter from Brown and, in any event, the operative date is November 30, 1998 when Respondent withdrew recognition of the Union not some nine days later when Brown sent her letter to Diana.

Since I find Respondent had a good faith reasonable doubt based on objective considerations as to the continued majority status of the Union I must conclude that Respondent did not violate the Act when it withdrew recognition. In reaching this conclusion I am relying on the Supreme Court decision in *Allentown Mack Sales and Service, Inc. v. NLRB,* supra; where the evidence to support a good faith doubt was considerably weaker than the evidence supporting the good faith doubt in the instant case.

The General Counsel argues in this case, and is joined by the Charging Party, and has argued in *Chelsea Industries*, Case No. 7–CA–36846, a case pending before the Board, that recognition may be withdrawn from a Board certified union when there is reasonable good faith doubt of continued majority status only after a Board conducted election which the Union loses. That is not current law however and I am bound to follow current Board law as modified by the Supreme Court as noted above.

I believe, however, that what the General Counsel proposes would be an appropriate change to the law. In the instant case the employees who signed the November 24, 1998 letter stated in the letter that they wanted an election and that they wanted to vote on the matter of continued representation by the Union "immediately." The common sense intepretation the Supreme Court gives to the word "doubt" leads me to conclude that, contrary to Board law,[3] a request for a new election by half the employees in the Unit raises a reasonable doubt as to continued majority support of the Union.

A relatively quick election to resolve the "doubt" one way or the other raised by the November 24, 1998 letter would permit the Union and the Hospital to promptly return to the negotiating table or permit the Hospital to proceed with *certainty* and not *doubt* as to the desires of their employees regarding the matter of representation by the Union.

An election could result, absent objections, in the doubt regarding continued majority support raised by the employee letter being resolved in a matter of weeks whereas unfair labor

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[2] This is an apparent reference to negotiations regarding the larger registered nurse and licensed practical nurse units, which resulted in a contract.

[3] See, e.g., *Phoenix Pipe & Tube Co.,* 302 NLRB 122 (1991), enf'd, 955 F.2d 852 (3d Cir. 1991), *Laverdiere's Enterprises,* 297 NLRB 826 (1990), *Lammert Industries,* 229 NLRB 895 (1977) enf'd, 578 F.2d 1223 (7th Cir. 1978), which cases are cited by the General Counsel or Charging Party to support their claim that Respondent lacked a reasonable good faith doubt of continued majority support.

practice litigation before a Labor Board Judge, with exceptions to the Board, and review by the Court of Appeals could take years.

Conclusions of Law

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is a health care institution within the meaning of Section 2(14) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent did not violate the Act as alleged in the Complaint.

Upon the foregoing findings of fact and conclusions of law and pursuant to Section 10(c) of the Act, I hereby issue the following:[4]

ORDER

The Complaint is dismissed in its entirety.[5]

Dated, Washington, D.C. September 1, 1999.

Martin J. Linsky
Administrative Law Judge

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[5] The General Counsel's unopposed motion to correct transcript is granted.